

# Crossing the Line: When a Dismissal Becomes “Automatically Unfair”

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## INTRODUCTION

Automatically unfair dismissals differ significantly from general dismissals in that they typically involve a breach of a fundamental human right. The Labour Relations Act 66 of 1995, as amended (“**LRA**”), amongst other things, governs dismissals and sets out specific grounds that render a dismissal automatically unfair. For employers, understanding this concept is imperative, not only to ensure legal compliance, but also to avoid costly litigation and reputational harm.

## AUTOMATICALLY UNFAIR DISMISSALS

A dismissal is automatically unfair when the reason for termination falls within a prohibited ground listed in section 187(1) of the LRA. In essence, these grounds are rooted in constitutional and labour rights, which makes them non-negotiable.

The following are examples of dismissals that would be deemed automatically unfair:

- participation in or support for a protected strike;
- refusal to perform the work of employees engaged in a protected strike or who have been locked out, unless that work is essential to prevent actual danger to life, personal health, or safety;
- dismissals aimed at compelling an employee to accept a demand on a matter of mutual interest between the employee and employer;
- dismissal for exercising rights under the LRA, such as joining a union, participating in union activities, or engaging in collective bargaining;
- dismissal due to pregnancy, intended maternity leave, or any reason related to pregnancy;
- dismissals based on any form of unfair discrimination, unless it related to the inherent requirements of the job;
- dismissals arising from a transfer of a business as a going concern, wherein section 197 of the LRA provides protection for employees during this process; and
- dismissals as a result of making a protected disclosure, as set out in the Protected Disclosures Act 4 of 2000.<sup>1</sup>

A dismissal found to be automatically unfair may result in an order for up to 24 months’ remuneration in compensation. This is double the compensation that may be awarded for ordinary unfair dismissals, which is capped at 12 months compensation.<sup>2</sup>

## CONCLUSION

There exists a thin line between a general dismissal and an automatically unfair dismissal. Employers who cross the line can find themselves facing significant legal and financial consequences. Behind every employment relationship are constitutionally protected rights and the best strategy for employers is to approach dismissal with procedural fairness in mind, and also awareness of the substantive reasons that may render a dismissal automatically unfair.

<sup>1</sup>Labour Relations Act no. 66 of 1995, s 187

<sup>2</sup>Labour Guide South Africa Unfair dismissals. Available at: <https://labourguide.co.za/misconduct/unfair-dismissals> (Accessed: 27 June 2025)



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